IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2149 OF 2004

Church's Auxiliary for Social Action — Petitioners
vs.
1. Union of India & ors. — Respondents

Mr.Anupam Dighe i/b. Mr.N.S.Thacker for the petitioners.

Mr.A.J. Rana along with Mr.H.V. Mehta i/b. Mr.T.C.Kaushik for respondents 1 to 4.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 16th December 2004

P.C.

Heard Mr.Anupam Dighe, the learned counsel for the petitioners.

2. The Deputy Commissioner of Customs, Appraising Group VB, Mumbai passed an enforcement order on 13th September 2001 directing the petitioners to pay a sum of Rs.16,83,217/- as per the terms of the bond that was executed by the petitioners for clearance of the goods under nil rate of duty. The assessment of the consignment imported by the petitioners was done under nil rate of duty on execution of the bond by the petitioners and undertaking to produce the distribution/utilisation certificate as provided in notification no.148/1994. Admittedly, the distribution/utilisation certificate was not produced by the petitioners. Aggrieved by the order passed by the Deputy Commissioner of Customs, the petitioners

preferred the appeal before the Commissioner of Appeals but the same came to be dismissed being time barred. The petitioners carried the matter in second appeal before the Customs, Excise and Service Tax Appellate Tribunal, but without success. Aggrieved thereby the present writ petition has been filed.

3. The learned counsel for the petitioners urged that the petitioners do not press the challenge to the orders of the Commissioner of Appeals and the Appellate Tribunal, but challenge to the order in original being illegal and void ab initio is being pressed. We are afraid, the contention of the learned counsel for the petitioners cannot be accepted. The petitioners having prosecuted the statutory remedy of appeals cannot be permitted to urge now that the petitioners do not challenge the order passed by the Appellate Authority and the Tribunal and this court may examine the legality of the order-in-original.

4. No case for invocation of extraordinary jurisdiction is made out.

5. Writ petition is dismissed in limine.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)